

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 43 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

COMMISSIONER OF WEALTH TAX

Versus

TOPANDAS KUNDANMAL

Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner
MR DA MEHTA for MR KC PATEL for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 29/04/99

ORAL JUDGEMENT (per R. Balia, J.)

In relation to Assessment Years. 1969-70 to 1974-75 under the Wealth-tax Act, the Income Tax Appellate Tribunal Ahmedabad Bench 'B', at the instance of Commissioner of Wealth-tax, Rajkot, has referred the following question of law said to be arising out of its

order in Appeals Nos. 882 to 887 of 1982 decided on 30.8.1983.

"Whether, on the facts and in the circumstances of the case, additional compensation of Rs. 5,72,892 awarded by the learned Civil Judge (Senior Division) Jamnagar is includable in the total wealth of the assessee to each of the assessment years under reference?"

2. It has been pointed out that the question relates to inclusion of additional compensation of Rs. 5,72,892 awarded by the learned Civil Judge (S.D.) Jamnagar in the total wealth of the assessee for each of the assessment years on respective valuation date which are subject-matter of this reference. The judgment of the learned Civil Judge (S.D) Jamnagar was subject-matter of further appeal at the instance of the State which related to land acquisition matters. The very same question was referred to this Court in relation to Assessment Years 1961-62 to 1963-64 and 1964-65 to 1968-69 which was subject-matter of two Wealth Tax Reference No. 19/76 and Wealth Tax Reference No. 5/77, respectively. The Court declined to answer the question in both the references and left the Tribunal to adjust the assessment in the light of facts then existing. The observations which were made by the Court are reproduced hereinbelow:-

" We have given anxious consideration to the rival contentions. Having regard to the context of the facts in which the Supreme Court was speaking and particularly having regard to the fact that the question was arose before the Supreme Court as to when the show cause notices for reopening the assessment and for rectification of the assessment orders already made in light of the qualification of the value of the right to receive compensation in civil court under section 26 against which the appeal of the State Government was pending in the High Court which facts situation is not present before us in the present references, where the High Court by a reasoned and considerate judgment determined the value and quantified it, we are of the opinion, *prima facie*, that there is not much hope for enhancing the value of the property, namely, the right to receive compensation, merely because the leave for appeal to the Supreme Court is granted by the High Court and which has been granted as a matter of course in view of the constitutional provision in this behalf at all

the relevant times. In spite of this *prima facie* opinion, we do feel the difficulty which has been pointed out on behalf of the revenue that the exercise which ought to have been done as indicated by the Supreme Court has not been fully attempted and, therefore, we should not rush to answer the questions, and leave them to the Tribunal to adjust the matter in light of the submissions that maybe made by the Revenue as well as the assessee without having recourse to remitting the matter to the Wealth-tax Officer for purposes of carrying out the exercise afresh. We have pointed out to the learned counsel for the revenue that the fact situation with which we are concerned in these references is very difficult to overlook since the Division Bench of this very Court has assessed and estimated the fair market value of the property, namely, right to receive compensation for the land acquired by the Government. We have also pointed out to the learned counsel for the revenue that a substantial period has elapsed for which, if a proper discount factor is applied, the revenue may not find itself in a more advantageous position; but having regard to the legal position which has been laid down by the Supreme Court, we are of the opinion that in absence of the proper exercise having been done, we should decline to answer the questions following the course adopted by the Supreme Court in *CIT v. Indian Molasses Co. P. Ltd.* (1970) 78 ITR 474. We hope and recommend to the Tribunal that it will complete this exercise within a period of eight weeks from the date of the receipt of the order by the Tribunal in light of the material which has been already collected and the further material, if the parties want to adduce, and in light of what we have stated hereinabove.

The result is that we decline to answer both the questions in both these references, and leave them to the Tribunal to adjust accordingly, with no order as to costs."

3. The position is no different except the fact that meanwhile appeals before the Supreme Court being Civil Appeals No. 8542-43/72 have been decided on 25th July 1995 against the assessee and no additional amount ultimately became payable to the assessee.

4. In these circumstances, we decline to answer the

question referred to us and leave the Income Tax Appellate Tribunal to make appropriate order by taking into consideration the fact that no additional compensation, in fact, became payable to the assessee as a result of final decision on the proceedings arising out of the land acquisition proceedings taken by the assessee for enhancing the compensation determined by the Land Acquisition Officer.

The reference accordingly stands disposed of. There shall be no order as to costs.

(hn)